

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR-12-76-GF-BMM

Plaintiff,

vs.

BEAVER FRANK APPEL,

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

Defendant.

I. Synopsis

The United States accused Mr. Appel of violating his conditions of supervised release by using methamphetamine and failing to report to his probation officer. His supervised release should be revoked, and he should be sentenced to four months in custody, with fifty-six months of supervised release to follow to include a period of treatment at Connections Corrections.

II. Status

On November 27, 2012, Mr. Appel pleaded guilty to Failure to Register as a Sex Offender. On February 20, 2013, Chief United States Judge for the District of Montana Dana L. Christensen sentenced Mr. Appel to fifteen months in custody, followed by sixty months of supervised release. (Doc. 32.) His current term of supervised release began on November 15, 2013.

Petition

On November 10, 2016, the United States Probation Office filed a petition asking the Court to revoke Mr. Appel's supervised release. (Doc. 35.) The Probation Office accused him of violating his conditions of supervised release by using methamphetamine and failing to report to his probation officer. (*Id.*) Based on the petition, United States District Judge Brian Morris issued a warrant for Mr. Appel's arrest. (Doc. 36.)

Initial appearance

On November 15, 2016, Mr. Appel appeared before the undersigned in Great Falls, Montana, for an initial appearance. Federal Defender Hank Branon accompanied him at the initial appearance. Assistant United States Attorney Jessica Betley represented the United States.

Mr. Appel said he had read the petition and understood the allegations. He waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

Mr. Appel admitted that he violated the conditions of his supervised release. The violations are serious and warrant revocation of his supervised release.

Mr. Old Chief's violation grade is Grade C, his criminal history category is II, his underlying offenses is a Class C felony. He could be incarcerated for up to

twenty-four months. He could be ordered to remain on supervised release for sixty months, less any custody time imposed. The United States Sentencing Guidelines call for four to ten months in custody.

Mr. Branom recommended a sentence in the low-end of the guideline range, with supervised release to follow to include inpatient drug treatment. Ms. Betley agreed with Mr. Branom's recommendation. Mr. Appel exercised his right of allocution stating his dad is dying of cancer and that he has been trying to take care of him, which proved to be too much for him to handle. He also stated he has never received drug treatment.

III. Analysis

Mr. Appel's supervised release should be revoked because he admitted violating its conditions. He should be sentenced to four months in custody and fifty-six months of supervised release to follow. His supervised release should include treatment at Connections Corrections. This sentence would be sufficient given the serious violation of the Court's trust, but it would not be greater than necessary.

IV. Conclusion

Mr. Appel was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained

that Judge Morris would consider Mr. Old Cheif's objection, if it is filed within the allotted time, before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The Court FINDS:

Beaver Frank Appel violated the conditions of his supervised release by using methamphetamine and failing to report to his probation officer.

The Court RECOMMENDS:

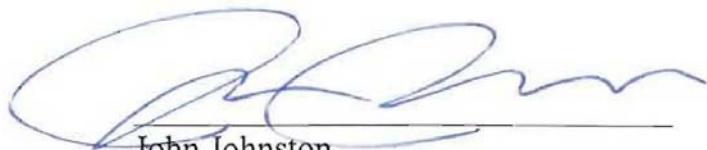
The district court should enter the attached Judgment, revoking Mr. Appel's supervised release and committing him to the custody of the United States Bureau of Prisons for four months with fifty-six months of supervised release to follow. His supervised release should include treatment at Connections Corrections.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written

objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 16th day of November 2016.



John Johnston
United States Magistrate Judge